

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION**

GYPSUM EXPRESS, LTD.¹

Employer

and

Case 3-RC-11370

TEAMSTERS LOCAL 1149

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, (herein the “Act”), a hearing was held before a hearing officer of the National Labor Relations Board (herein the “Board”).

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, I find:

The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.

The parties stipulated that Gypsum Express, Ltd. (herein, the “Employer”) is a New York corporation with its principal place of business located in Baldwinsville, New York, where it is engaged in the transportation of goods and materials on a local and interstate basis. During the past 12 months, the Employer has derived gross revenues in excess of \$50,000 from such

¹ The Employer’s name appears as corrected by stipulation at the hearing.

interstate transportation operations. Based on the parties' stipulation and the record as a whole, I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

The parties stipulated, and I find, that Teamsters Local 1149, (herein the "Petitioner") is a labor organization within the meaning of Section 2(5) of the Act. The Petitioner claims to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer, within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The petitioned-for unit, as amended at the hearing, is comprised of all full-time and regular part-time "spotters" employed by the Employer at its Baldwinsville, New York facility, but excluding all local drivers, transportation advantage drivers, over-the-road drivers, mechanics, office clerical employees, dispatchers, guards and supervisors as defined in the Act.² "Spotters" are also known as "Spotting Service Automation" (SSA) or "inside" drivers.

The Employer seeks a unit comprised of all full-time and regular part-time dedicated fleet drivers, who work exclusively under the Anheuser Busch contract for the Baldwinsville Brewery (SSA and Transportation Advantage Drivers), excluding all other employees including non-dedicated drivers, mechanics, office employees, supervisors and guards as defined by the Act. Thus, the Employer contends, contrary to the Petitioner, that the only appropriate unit is one which includes the "Transportation Advantage" also known as "TA" or "outside" drivers. However, the Employer does not assert that the unit should also include local drivers or over-the

² At the hearing, the Petitioner withdrew its request to include the Route 57, Phoenix, New York facility in the petitioned-for unit.

road drivers. Thus, the only issue presented herein is whether the “TA” drivers must be included in a unit of spotters.³

The Petitioner is unwilling to proceed to an election in an alternate unit.

The parties stipulated at the hearing, and I find, that George LePage (Spotting Manager) and Christian Dempsey (TA Supervisor and Dispatcher) should be excluded from the unit found appropriate herein because they are supervisors who perform one or more of the duties defined by Section 2(11) of the Act.

The Employer is a transportation carrier that transports full trailers of commodities for various clients. It employs approximately 250 drivers nationwide. Approximately 180 drivers are located at the Baldwinsville, New York terminal located at 8280 Sixty Road.⁴ The Employer operates three divisions each with a set number of drivers: Anheuser Busch Service Division (60 drivers), Local Division (35 drivers), and Over-the-Road Division (85 drivers). Larry Harris is the Employer’s Operations Manager; his office is located at the Employer’s Baldwinsville Terminal. He oversees all of the drivers at the Baldwinsville terminal including the Anheuser Busch Service Division. Local Division Manager, Doug Axe, and Over-the-Road Manager, Jim Miano, both report to Harris.

³ A Decision and Direction of Election issued May 31, 2000, in Case 3-RC-10974, involving the same parties herein. The unit found appropriate therein included: All full-time and regular part-time spotters, local drivers, and Transportation Advantage (TA) drivers at the Employer’s Sixty Road and Route 31 Baldwinsville, New York facilities and its Route 57, Phoenix, New York facility; excluding over-the-road drivers, mechanics, office clerical employees dispatchers, guards and supervisors as defined in the Act. Unlike in the instant case, the petitioner therein sought to include spotters and *local drivers* in the unit and to exclude TA drivers as well as over-the-road drivers. The Regional Director found the local drivers shared a community of interest with the TA drivers, thus, finding the appropriate unit should include the TA drivers. The instant case is distinguishable in that the Petitioner seeks only to represent the spotters. Local drivers were not asserted by either party to be appropriately included in the unit petitioned-for herein.

⁴ The parties further stipulated that the unit should include only the Employer’s operation in Baldwinsville, New York.

The Employer's Baldwinsville terminal is in close proximity to the Anheuser Busch Brewery, herein AB. The terminal property line is adjoined to the brewery, with the two property lines divided by fencing and railroad tracks. The Employer operates a maintenance shop and fueling station, on Route 31, which is also in close proximity to the AB brewery and terminal. The Employer's administrative offices, located at the Sixty Road terminal, service the 180 drivers employed at the Baldwinsville terminal. These offices include the payroll and human resource departments and the compliance office. The compliance office handles licensing and Department of Transportation requirements. Employee wages are directly deposited; neither the TA drivers nor the spotters visit the payroll department to receive their paychecks.

The Employer's AB Division includes sixty employees: 20 spotters and 40 TA drivers. The Employer operates a fleet of specially made tractor-trailers to transport AB product to its various distributors within a 300-mile radius. This fleet is referred to by the Employer as "dedicated" to the AB transportation services. This fleet of tractor-trailers is distinct because it has the Anheuser Busch logo and is only used to provide "dedicated" transportation services to AB. The Employer provides transportation services to AB twenty-four hours a day, seven days a week. To fulfill this obligation, the Employer uses the TA drivers, spotters, over-the-road drivers, and local drivers.⁵ The TA drivers within the AB Division drive only the AB dedicated trailers. AB also uses other common carriers, in addition to the Employer, to transport its product from the Baldwinsville brewery.

Spotters report to work at the AB brewery. Approximately 90 percent of the spotters' workday is spent at the AB brewery. The other 10 percent of the spotters' time is spent at the

Ingsley Warehouse, the maintenance shop and/or the refueling station.⁶ At the beginning of their workday, spotters drive their personal vehicles onto AB property, which requires a parking badge. Their tractors are also parked on AB property. Six spotters work on each shift; one of the six remains on the north dock for the entire shift. On occasion, the other two docks require a spotter to remain there. Spotters assigned to the docks straighten and arrange product for loading and unloading. Spotters are guaranteed 40 hours per week on one of the following three shifts: 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m. or three 12-hour days with one 6-hour day.

There are approximately three docks (north, east and west) and an inbound and outbound transition lot is used by the spotters within the brewery. The docks are located approximately 100 ft. to 1000 ft. from the transition lot.

The spotters' primary function is to drive trailers from the dock to the transition lot for loading and unloading. Fifty-five percent of the spotters' work consists of servicing other common carriers that transport AB product.⁷ Spotters relocate the trailers approximately 50 times per day. The outbound side of the transition lot is designated for trailers loaded with AB beer products for transport to various AB distributors, and the inbound side is for trailers or trailers returning empty AB packaging materials such as cans, kegs and cardboard tiers.

Spotters are trained specifically for their position.⁸ This training is unique to the spotters' job functions, which include the use of the "Ottawa tractor." The unique primary function of the spotters is to operate the Ottawa tractor in transporting trailers. The Ottawa

⁵ The term of the service contract between AB and the Employer was April 10, 2000 through April 9, 2003. The record establishes that the Employer continues to honor its contractual obligations beyond the term of the contract.

⁶ A third party owns the Ingsley Warehouse. It is located across the street from the AB brewery. TA drivers deliver inbound materials to the warehouse or pick up glass for transport to the brewery.

⁷ The Employer did not state whether the remaining 45% of spotters' work is performed solely for the dedicated AB fleet, however there is no evidence to indicate that the Employer is servicing other customers from the AB brewery where the spotters work.

tractors are designed to efficiently move trailers to multiple locations and are used in the coupling and uncoupling of tractor-trailers and in the trailers' movement and placement. The Ottawa tractor has a fifth wheel hydraulic system that couples and uncouples with the trailers.⁹ The Ottawa tractors are limited to a speed of 35 miles per hour. They are parked at the brewery, where the spotters enter the facility with their own personal vehicles to report to work.

George LePage is the Spotting Manager, and the spotters' immediate supervisor. LePage is located at the brewery where the spotters work. He facilitates the spotters' work including the assignment of tractors. Each tractor has a computer system that continually assigns work-tasks for the spotters to perform. LePage attends management meetings in addition to performing spotter's work throughout the day. LePage maintains a bulletin board in the drivers' lounge at the AB facility for the spotters. He uses the bulletin board to communicate information to the spotters at the brewery. The information that LePage posts on the bulletin board includes the vacation calendar for spotters, a list of the spotters' names and login ID numbers and the brewery's man-hour reports. LePage determines which shift a spotter will work on a day-to-day basis depending on the needs of AB. Once LePage receives a projection of the service demands for the day, he assigns the appropriate shifts.

The TA drivers report to work at the Employer's terminal parking lot where they park their personal vehicles. Their pre-assigned tractors are also parked at the terminal parking lot. Once they retrieve their tractors, they sign in on their computer, which is located inside the tractor, to clock-in for the day. The computer assigns the TA driver an order number that identifies the trailer for transport. The TA driver then drives the tractor to the AB brewery gates

⁸ Harris' testimony was unclear regarding the spotters' unique training. While he failed to explain what the training involved, he admitted that the TA drivers did not receive such training.

⁹ Coupling is the hooking of the power unit to and from the tractor to the trailer.

where a guard gives the driver the trailer number assigned to his/her particular order. The driver then retrieves the trailer from the transition lot and delivers the trailer to the designated distributor.

TA drivers pick up the loaded trailers from the transition lot and transport the AB products to various beer distributors. They may complete as many as five driving assignments a day or as few as one per day. Each assignment is within a 7 to 300-mile radius from the brewery. This includes locations in Pennsylvania, Vermont and Massachusetts. TA drivers complete all assignments within the workday. Approximately 1½ hours of the TAs' workday is spent at the AB brewery. The remainder of their work time is spent on the road.

The TA drivers may come into contact with the spotters while picking up the loaded trailer at the transition lot. The majority of the time, the TA drivers do not come into contact with the spotters during the transfer because the loaded trailers are most often left at the transition lots by the spotters for the TA drivers' subsequent pickup.

Harris testified that the TA drivers do not have set work hours. They may begin their shift in the morning or evening. A driver with an evening shift may begin his/her shift between 5:00 p.m. and 2:00 a.m. or between 2:00 a.m. and 10:00 a.m.¹⁰ The shifts range from 4 to 15 hours, with a maximum of 10 driving-hours, a limit set by the Department of Transportation Guidelines.

The record indicates that the TA drivers operate lightweight, day-cab tractors.¹¹ These tractors do not contain sleeping quarters, primarily because the TA drivers return to the brewery from the drop-off location the same workday. TA tractors have "call com" devices, which the

¹⁰ No estimated start times were provided for the morning shifts.

¹¹ TA drivers do not use and have not been trained to operate Ottawa tractors.

spotters do not have. This is a global positioning satellite used by the Employer to locate and communicate with TA drivers. TA drivers also have computers with a keyboard and monitor that display only TA work assignments. Spotters also have computers that access and display tasks unique to the spotters, but they have different monitors and computers than the TA drivers. The computers for each employee group have different information, which is not shared among the groups.

The TA drivers, as compared to the spotters, only drive the Employer's AB dedicated trailers. The spotters do not load or unload these trailers; this work is performed by the dockworkers. The TA drivers on occasion drive the trailers directly to the docks, but TA drivers are not permitted on the docks. The spotters generally do not encounter the TA drivers while working on AB work because they leave the trailers at the transition lot for the TA drivers to pick up at a later time.

TAs and spotters report to work by logging into computers unique for their respective positions. The TAs and spotters working in the AB division have their start-times and end-times recorded by their respective computers. The TA drivers' end-times are determined by the completion of their particular driving routes. They receive their work assignments from their specialized computers. The computers access AB networks in St. Louis, Missouri.

The Employer owns all the tractors and trailers used by the TA drivers and spotters. The tractors bear the Gypsum Express logo and the dedicated trailers bear both Gypsum Express and Budweiser logos.

The spotters and the TA drivers each have separate supervisors. Christian Dempsey is the TA Supervisor or "Dispatcher," and George LePage is the Spotting Manager. Both Dempsey and LePage report to Harris, the Operations Manager. Dempsey maintains an office at

the 60 Road Facility where the TA drivers retrieve their tractors at the start of the workday. LePage's location is at the AB facility with the spotters.

Each supervisor independently issues oral discipline to his employee group and prepares performance evaluations in conjunction with Harris.¹² All written disciplinary warnings for ongoing employee problems go through Harris and are signed by Harris for both spotters and TA drivers.

Spotting supervisor LePage is involved in the hire, discharge and performance evaluation of the spotters.¹³ Similarly, Dempsey, the TA supervisor, is involved in the hire and evaluation of the TA drivers.

The employee groups have different compensation methods. Spotters are paid an hourly rate of \$15 per hour. The TA drivers are paid per mile at a rate of \$.30 cents a mile. During wait time when stock is not moving, TA's are paid an hourly rate of \$15 per hour with no pay for the first hour.¹⁴ The spotters' wage increase is determined by length of service and a positive performance evaluation. The amount of the increase is pre-determined by the length of service with incremental increases by mileage for the TA drivers and per hour for the spotters.

The Employer offers the same fringe benefits to all 180 drivers, which includes the local and over-the-road drivers at the Baldwinsville terminal. As such, the fringe benefits for the spotters and TA drivers are similar. They receive the same holiday pay, 401(k) plan, life and

¹² The record does not disclose whether spotting supervisor LePage can effectively recommend discharge and hire. Nor does it disclose the degree of involvement the spotting supervisor has in employee performance evaluations.

¹³ The evidence indicates that the Employer terminated one employee. Harris and the former spotter manager were involved in the decision; however, the final decision was Harris'.

¹⁴ The Employer failed to provide the amount of incremental wage increases or the wage range for the employee groups.

health insurance, employee assistance and a variable long-term disability program. Both employee groups are governed by the same company policies and Department of Transportation rules and guidelines, as are all 180 drivers, including the local and over-the-road drivers. Both employee groups maintain commercial drivers' licenses.

All drivers are awarded vacation time according to length of service, including the TA drivers and spotters. However, the selection of a specific vacation period is based on seniority within the spotter and TA groups. Seniority is determined separately for each group.¹⁵ Spotter Manager LePage maintains the seniority list for the spotters and TA Manager Dempsey maintains the seniority list for the TA drivers. Seniority is used to determine layoff and recall, work assignment scheduling, start-time preference and the assignment of new equipment within each group.

There is no record evidence that the Employer has mandated interchange of spotters and TA drivers. Rather, on approximately twenty occasions within the last 12-month period, spotters have voluntarily elected to drive TA runs on their off-days.¹⁶ During the past 12-month period, 4 or 5 employees permanently transferred between spotter and TA positions.¹⁷ Spotter and TA positions are posted company wide; spotters and TAs can apply for these positions.

There are two break rooms located at the AB Brewery. One break room is available to all drivers. Another break room is available to the AB drivers. TA drivers and spotters also have available to them two break rooms on the Employer's premises: one located at the

¹⁵ Harris originally testified that the two groups shared a seniority list, however, subsequently he admitted the groups maintain separate lists.

¹⁶ There is no evidence to establish that at any time spotters or TA drivers have substituted for one another during their regular shifts. When spotters perform the occasional TA runs on their own time, they are paid the TA mileage rate.

¹⁷ The record evidence does not establish whether the permanent transfers were voluntary or directed by the Employer.

maintenance/fueling station, and one at the Employer's terminal on Sixty Road. The terminal also has a locker room that is available to both the TA drivers and spotters.

The Employer has a safety committee, which includes a TA and a spotter representative, along with a representative from the local and over-the-road drivers. This committee meets annually at an off-site location. The employee groups attend orientation sessions.¹⁸

Both the spotter and TA employee groups have identification badges. In addition, the spotters have identification badges for their vehicles because they are permitted to park on AB property whereas the TA drivers are not permitted to park on the AB property. Each employee group has its own unique uniform with the Employer's logo. The TA drivers wear gray uniforms; the spotters wear red.

There is no evidence of a bargaining history at this facility.

Analysis

The Act only requires the petitioned-for unit be an appropriate unit; it does not require the unit be the only appropriate or even the most appropriate unit. The Boeing Co., 337 NLRB No. 24, slip op. at 2 (2001); Overnite Transportation Company, 322 NLRB 723 (1996) ("Overnite I"). The Board's procedure for determining an appropriate unit under the Act is to first evaluate the petitioned-for unit. If the unit is found appropriate, thereby ensuring employees "the fullest freedom" in exercising their rights under the Act to select a representative of their own choosing, then the inquiry into the appropriateness of the unit ends. Overnite Transportation Company, supra.

¹⁸ The Employer failed to disclose what information is covered in orientation and whether all 180 drivers attend orientation, in addition to the spotters and TA drivers.

A unit is appropriate when the employees in the petitioned-for unit share a community of interest. NLRB v. Action Automotive, 469 U.S. 490, 494 (1985). To determine whether employees share a community of interest, the Board considers such factors as “mutuality of interest in wages, hours [of work], and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration.” Ore-Ida Foods, Inc., 313 NLRB 1016, 1019 (1994).

The Board has long held that a drivers unit, excluding other driver classifications, is appropriate for bargaining purposes where the unit has its own clearly defined identity, is functionally distinct and has separate interests. Overnite Transportation Company, 331 NLRB 662 (2000)(“Overnite II”); See, also, Century Moving & Storage, Inc., 251 NLRB 671, 680 (1980)(a unit of local drivers and helpers, excluding long haul drivers, found appropriate where unit had distinct job functions and method of compensation); Western Distributing Co. d/b/a Western-Davis Co. Inc., 236 NLRB 1224, 1226 (1978), enf. denied on other grounds, 608 F.2d 397 (10th Cir. 1979)(drivers unit found appropriate where they have minimal contact with route drivers and different equipment.); Georgia Highway Express Inc., 150 NLRB 1649, 1651 (1965)(city drivers that traveled within a 20-mile radius of the employer did not share a sufficient community of interest with long haul drivers where they had different duties and functions, separate supervision and different bases of payment.)

In Overnite II, *supra*, the primary function of drivers, known as “jockeys” was to transport trailers to various locations on the employer’s terminal yard or situs in preparation for loading and unloading. Jockeys remained at the employer’s stockyard throughout the workday. Excluded from the unit were “city” drivers that made deliveries within a 35-mile radius of the employer’s stockyard and “road” drivers that drove substantially longer distances. The city and

road drivers spent most of their day away from the employer's stockyard. Jockeys that maintained a commercial driving license occasionally volunteered on their off time to drive runs customarily performed by the excluded drivers.

The Board in Overnite II considered whether the Regional Director's decision to include city and road drivers in the petitioned-for unit was appropriate. The Board held that the inclusion of the drivers was inappropriate. In so finding, the Board considered the extensive amount of time the drivers spent away from the employer's work situs (as compared to the jockeys that remained at the employer's yard); the jockeys lack of skill or training, no overlap in duties with the excluded drivers, the jockeys' distinct job functions and no substantial interchange.

I conclude, and the record establishes, that the spotters do not share a sufficient community of interest with the TA drivers to mandate the inclusion of the TA drivers in the spotters' unit. Thus, the petitioned-for unit is appropriate. As discussed more fully below, I find that the spotters have different job functions and primary work situs, unique skills and training, minimal contact and minimal functional integration with the TA drivers, different compensation methods, separate immediate supervision, different terms and conditions of employment and no mandatory interchange with TA drivers.

The TA drivers are similar to long haul or over-the-road driver classifications. The TA drivers travel within a 300-mile radius of the Employer's terminal and they spend approximately 1½ hours at the brewery where the spotters work.¹⁹ The spotters work almost exclusively at the

¹⁹ TA drivers are not permitted on the docks where approximately one to three spotters may spend their entire workday.

AB brewery. The spotters and TA drivers have different compensation methods; the spotters are paid hourly and the TA drivers by mileage.

Spotters have unique skills and functions. They operate the Ottawa tractor specially designed for the coupling and uncoupling of tractor-trailers. Although both employee groups maintain commercial driving licenses, the spotters have specific training unique to their position that the TA drivers do not receive. The TA drivers do not drive the Ottawa tractors. The primary function of the spotters is to move trailers from the docks to the transition lot, unlike the TA drivers whose function is to transport product to various distributors within a 300-mile radius.

Similar to Overnite II, in the instant case, the spotters have minimal contact and minimal functional integration with the TA drivers. The spotters spend approximately 90 percent of their workday at the AB terminal as compared to the TA drivers who spend approximately 1½ hours of a 10 to 15 hour day at the AB terminal and the remainder of the time on the road.²⁰ The majority of the TA driver's workday is spent away from the work situs at which the spotters work. This precludes significant contact between the employee groups.

The record establishes that there is minimal functional integration between the employee groups. The work of one group is not so dependent upon the work of the other that one could not effectively function without the other. Fifty-five percent of the spotters' work consists of servicing other common carriers that service AB product. The TA drivers, as compared to the spotters, only drive the Employer's dedicated trailers. The spotters do not load or unload the trailers; the dockworkers perform this task. Thus, while the spotters' work creates a greater level

²⁰ The Employer identified the following locations as possible points of contact between the employee groups: maintenance shop, fueling station, payroll department, Employer and AB lounges and Ingsley warehouse. The Employer failed to establish the frequency of such contact; however, the opportunity for contact at these locations is minimal at best.

of efficiency by placing the trailers at the transition lot, the work of the TA drivers would continue even if this were not done. The TA drivers would simply retrieve the trailers from the dock and complete the delivery process as normal. In addition, the TA drivers occasionally drive the trailers directly to the docks.

The spotters service the Employer's trailers only 45 percent of the time; the other 55 percent they service other common carriers. The TA drivers exclusively drive the Employer's dedicated trailers. The Employer references an incident in which a TA driver, while waiting for a loaded trailer, approached a spotter to inquire about the time delay in receiving the loaded trailer. However, a "great majority" of the time, the spotters leave the loaded trailers at the transition lot for subsequent pickup by the TA drivers, thus, such contact is incidental and infrequent.

The Employer includes the TA drivers and spotters in one Division (AB). However, the over-the-road and local drivers, whose inclusion in the unit is not sought by the parties, also provide some transportation services for AB. Thus, the Employer's administrative designation of drivers in the same division or department, is not dispositive, where, as here, the other community of interest factors the Board considers weigh against a community of interest finding. Ore-Ida Foods, Inc., 313 NLRB 1016 (1994).

The spotters have different terms and conditions of employment than the TA drivers. The TA drivers have unique equipment; they use "call com," the global positioning equipment which the spotters do not use, and they have different computers providing assignment information than those used by the spotters. Spotters drive the Ottawa tractors; the TA drivers do not. As noted above, spotters have separate daily supervision. The spotters have different uniforms (the TA drivers uniforms are gray and the spotters are red) and they have a separate

seniority list from the TA drivers. Seniority determines the order of layoff, recall, vacation schedules, work assignments, the assignment of new equipment and employee start time preferences for both employee groups.

The spotters report to work directly to the AB brewery where they park their personal vehicles and pick up the Ottawa tractors. TA drivers report to the Employer's terminal where they park their personal vehicles and pick up the dedicated tractors. The TA drivers do not have parking badges given to the spotters to park on the AB brewery premises. TA drivers enter the AB brewery only after instructed by the brewery guards as to the location of their assigned trailer.

A community of interest analysis requires weighing all of the relevant factors to determine the appropriateness of a petitioned-for unit. See, e.g. Hotel Services Group, 328 NLRB 116(1999). To support its contention that the employer-groups share a community of interest, the Employer asserts that there is substantial employee interchange and common management vested with supervisory authority over the two groups.

I find, and the evidence establishes that, contrary to the Employer's assertion, there is no substantial employee interchange to compel the inclusion of the TA drivers in the unit found appropriate herein. The Employer has not directed the removal of TA drivers to spotter positions on a temporary basis or vice versa. Only on a voluntary basis have spotters elected to drive TA routes their own time on their off days.²¹ Voluntary interchange is given less weight in a unit determination. Overnite II, 331 NLRB at 663; Red Lobster, 300 NLRB 908, 911 (1990). In Overnite II, the Board found the voluntary interchange among the employee groups de minimis

²¹ The Employer's witness, Harris testified that TA drivers on occasion drive their tractor-trailers to the loading docks, as evidence of interchange with spotters. However, this is not interchange. The TA drivers are merely performing a task customarily performed by spotters.

and insufficient to warrant the drivers inclusion in the unit. In so finding, the Board also considered the unspecialized skills of the petitioned-for employees, including the jockeys, and the amount of time the city and road drivers spent away from the employer's yard as compared to the jockeys that spent their entire workday at the employer's yard.

In regard to permanent transfers, four to five employees were permanently transferred between the TA driver and spotter groups. However, permanent employee transfer is a less significant indication of employee interchange than temporary transfers. Red Lobster, supra, at 911. In Red Lobster, the Board also considered voluntary employee interchange. It found that the degree of employee interchange was diminished because it was voluntary. The Board reasoned that the voluntary transfers were more "a matter of employee convenience" as compared to an indication of common interest with the excluded employee group.

Herein, the spotters spend 90% of their time at the brewery and the TA drivers spend a vast majority of their workday on the road. The spotters volunteered for TA assignments solely on their days off, approximately 20 times in a 12-month period. A spotter, during a regular shift transports trailers approximately 50 times per day, and the TA drivers complete 1 to 5 assignments per day.

The spotters and TA drivers have separate day-to-day supervision. The Employer argues that the groups have common supervision. To support this argument the Employer states that Harris, the Operations Manager maintains supervisory authority over the spotters and that the spotter supervisor is a working supervisor. The record includes evidence, in addition to the parties' stipulation, that the spotting supervisor exercises one or more supervisory indicia. Particularly, the spotter supervisor is involved in issuing verbal discipline, assists in preparing

employee performance evaluations, hiring, firing, facilitating the spotter's work and assigning shifts on a day-to-day basis.

In Century Moving & Storage, Inc., 251 NLRB at 680, the Board found the drivers unit that excluded long haul drivers was appropriate, although, the two groups had identical supervision. In so finding, the Board reasoned that in addition to different methods of compensation and distinct functions, the day-to-day supervision of the included drivers flowed from their distinct job functions. Here, the spotters have their own first line supervisor located at the AB brewery, as compared to Harris and the TA supervisor whose offices are at the Employer's terminal. Harris also supervises all 180 drivers located at the Baldwinsville terminal and all divisional supervisors. More importantly, the spotters' supervisor issues verbal discipline, facilitates the spotters' work and assigns shifts on a day-to-day basis.

Based upon the many factors weighing against finding that the spotters share a community of interest with the TA drivers, including different compensation methods, equipment, front-line supervision, seniority lists, uniforms, hours of work, skills and functions, work situs and no substantial interchange or contact, I find that the spotters constitute a homogenous group and a separate appropriate unit.

APPROPRIATE UNIT

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time spotters employed at the Employer's Sixty Road and Route 31, Baldwinsville, New York facilities; excluding all local drivers, transportation advantage drivers, over-the-road drivers, mechanics, office clerical employees, dispatchers, guards and supervisors as defined in the Act.

There are approximately 20 employees in the bargaining unit found appropriate herein.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate, as described above, at the time and place set forth in the notices of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

TEAMSTERS LOCAL 1149.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to lists of voters and their addresses, which may be used to communicate with them. *Excelsior*

Underwear, Inc., 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision, 2 copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director of Region Three of the National Labor Relations Board who shall make the lists available to all parties to the election. In order to be timely filed, such lists must be received in the Thaddeus J. Dulski Federal Building, 111 West Huron Street, Room 901, Buffalo, New York 14202 on or before **August 29, 2003**. No extension of time to file the lists shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 Fourteenth Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by **September 5, 2003**.

DATED at Buffalo, New York this **22nd** day of **August, 2003**.

HELEN E. MARSH, Regional Director
National Labor Relations Board – Region 3
Thaddeus J. Dulski Federal Building
111 West Huron Street - Room 901
Buffalo, New York 14202